

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LUELLA I. TONG)	
Claimant)	
VS.)	
)	Docket No. 193,114
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY COMPANY)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Respondent and its insurance carrier requested review of the Award dated January 10, 1997, entered by Administrative Law Judge Jon L. Frobish.

APPEARANCES

Boyd A. Byers of Wichita, Kansas, appeared for the respondent and its insurance carrier. Cortland Q. Clotfelter of Wichita, Kansas appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge found the Workers Compensation Fund had no liability in this proceeding. Respondent and its insurance carrier requested the Appeals Board to review that finding. Fund liability is the only issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award should be modified to find the Workers Compensation Fund liable for the entirety of the benefits previously awarded to claimant in this proceeding.

Claimant sprained her left ankle on April 9, 1993. The medical evidence is uncontroverted that claimant did not fully recover from that accident because of preexisting hyperparathyroidism. On July 21, 1993, claimant reported she injured her right knee. Again, the medical evidence submitted is uncontroverted the right knee injury would not have occurred "but for" the left ankle injury and the hyperparathyroidism.

The Appeals Board finds respondent had knowledge of claimant's thyroid problems before April 1993. Respondent's records indicate that it was aware of the thyroid problem as early as October 1992. Respondent's in-house physician, Kenneth D. Zimmerman, M.D., testified respondent knew of claimant's preexisting condition before April 1993, and that respondent reported the impairment to the state's Division of Workers Compensation on the appropriate form.

Based upon Dr. Zimmerman's uncontroverted testimony, the Appeals Board finds claimant's thyroid condition before April 1993 was of such character as to constitute a handicap in her obtaining or retaining employment. Dr. Zimmerman testified how the condition causes calcium crystals to be deposited into the soft tissue of the knees, ankles, and wrists, and also how it can cause chronic recurrent pain in those soft tissues. Dr. Zimmerman diagnosed chondrocalcinosis, or the pathological calcification of soft tissue, as the problem with claimant's right knee.

Doctor Zimmerman also testified claimant was given permanent work restrictions in September 1992 for the problems involving the opposite knee, the left knee. The doctor also diagnosed the left knee as having chondrocalcinosis. Because of the left knee problem, which was also addressed by respondent's medical department, respondent was aware, or at the very least had suspicions, that claimant's hyperparathyroidism was creating excess calcium deposits in claimant's body and creating impairment to such extent as to require permanent work restrictions.

When considering the entire record and the logical inferences from that evidence, the Appeals Board finds respondent has established it retained claimant in its employment

before April 1993 with knowledge she had an impairment which constituted a handicap in obtaining or retaining employment.

Under the provisions of K.S.A. 1992 Supp. 44-567 and K.S.A. 44-567 (Furse), the Appeals Board finds the Workers Compensation Fund is entirely responsible for the benefits previously awarded claimant in this proceeding for both the April 1993 and July 1993 accidents.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated January 10, 1997, entered by Administrative Law Judge Jon L. Frobish should be, and hereby is, modified to assess the Workers Compensation Fund with the entire liability for payment of the benefits previously awarded to claimant in this proceeding.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Boyd A. Byers, Wichita, KS
 Cortland Q. Clotfelter, Wichita, KS
 Jon L. Frobish, Administrative Law Judge
 Philip S. Harness, Director